



Department of General Services
Procurement Division
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

State of California SOFTWARE LICENSING PROGRAM (SLP)



Contractor: Eskel-Porter, Inc.
Contract Number: SLP-06-70-0049A
SLP Contract Term: 11/02/06 through 10/11/08
Contract Base: CA, Inc. Offer Number CASLP2006

This contract is available for use by State of California departments and any city, county, special district, educational agency, local government body or corporation empowered to expend public funds. While the state makes this contract available, each local agency should make its own determination whether the SLP is consistent with their procurement policies and regulations.

The SLP Contractor is required to provide all SLP contract terms and conditions with the list of products, services and prices.

The most current ordering instructions and terms and conditions are included herein. If there are future changes to the ordering instructions and/or terms and conditions, these changes will be incorporated by an amendment to this contract.

Contractor non-compliance with the requirements of this contract may result in contract termination.

By signing below, Contractor agrees to the General Provisions dated June 21, 2006 Software Special Provisions and Purchase Special Provisions dated January 21, 2003 and all other provisions included herein.

For State of CA:

Rita Hamilton
Deputy Director, Procurement Division
Department of General Services

Date

For Contractor:

Signature

Printed Name

Printed Title

Company Name

Date

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CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

The SLP Contractors are required to provide the entire contract that consists of the following:

- SLP Cover sheet with signatures from the DGS Procurement Division Deputy Director or designee and Contractor
- Ordering instructions
- Std. 204 Payee Data Record
- SLP Contract terms and conditions (General provisions)
- SLP pricing
- Supplements, if applicable

CONTRACTOR QUARTERLY REPORTS

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, Software Licensing Program (SLP), 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Steve Lower. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete and returned to the contractor.

To facilitate collection of administrative fees, copies of local government agency purchase orders must accompany the SLP quarterly report. This new requirement is effective beginning the second quarter of 2005, for reports due to the SLP Unit within two weeks after the end of June 2005.

New contracts for contractors with existing contracts, and extensions or renewals of existing contracts, will be approved ONLY if the contractor has submitted to the SLP Unit all quarterly reports, due. Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

A sample quarterly report indicating required format and information is attached for your reference (Attachment A).

CONTRACTOR INVOICES

Unless otherwise stipulated, the contractor must send their invoices to the department address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the SLP contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

CONTRACTOR OWNERSHIP INFORMATION

Eskel-Porter, Inc. is a large business enterprise.

AGENCY NON-COMPLIANCE

Agency non-compliance with the requirements of this contract may result in the loss of delegated purchasing authority to use the SLP.

PLEASE REQUEST A COPY OF ALL CONTRACT TERMS AND CONDITIONS FROM THE CONTRACTOR, IF NOT PROVIDED INITIALLY.

AVAILABLE PRODUCTS AND/OR SERVICES

This contract provides for the purchase and warranty of software, software maintenance, and technical support.

CONSULTING SERVICES ARE NOT AVAILABLE UNDER THIS CONTRACT.

Only products from the manufacturer listed below are available within the scope of this contract:

- CA, INC.

ISSUE PURCHASE ORDER TO:

Orders may be mailed to the following address, or faxed to 916-669-2270:

**Eskel-Porter, Inc.
723 S Street
Sacramento, CA 95814
Attn: Steven Galvez**

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Agencies with questions regarding products and/or services may contact the contractor as follows:

Phone: 916-492-1212, Ext. 239

E-mail: sgalvez@eskelporter.com

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Destination.

DELIVERY

30 days after receipt of order, or as negotiated between agency and Contractor and included in the purchase order.

MAXIMUM ORDER LIMIT IS \$500,000 (Local Governments are Exempt)

State departments must follow the Management Memo (MM) guidelines pursuant to this contract.

These transactions are subject to the following requirements:

- State agencies must solicit a minimum of 3 contractors including 1 small business and/or DVBE (if available) and document responses. This is not a bid transaction so small business preference, protest language, intents to award, evaluation criteria, advertising, etc. are not applicable.
 - If less than 3 offers received, state agencies must document their files with the reasons why the other suppliers solicited did not respond with an offer.
 - If only one source is known (competing offers cannot be obtained), the non-competitive bid (NCB) contract process must be followed. See the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, for NCB guidelines. Exceptions to NCB process are also addressed in MM 03-10.
 - Evaluation and award may be based on best value, as applicable, and not restricted to lowest cost.
 - For SLP transactions under \$5,000 only one offer is required if the state agency can establish and document that the price is fair and reasonable.
 - Orders for Information Technology Goods and Services exceeding \$250,000 require additional documentation. See the latest Management Memo (currently MM 03-10) for specific information on these additional requirements.
 - Exemptions to the SLP order limits are not allowed.
- Local governments set their own order limits, and are not bound by the above order limits and requirements.

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (SAM 3572).
Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

There is no minimum dollar value limitation on orders placed under this contract.

ORDERING PROCEDURES

1. Order Form

State departments shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing web site: <http://www.dgs.ca.gov/osp> (select Standard Forms). The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65: <http://www.osp.dgs.ca.gov/pdf/std065.pdf>

2. Purchase Orders

The ordering entity is required to forward a copy of each purchase order to the Department of General Services (DGS), Procurement Division, Business Management Section, Data Capture unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811.

The department is required to complete and distribute the order form.

The cost for each line item should be included in the order, not just totals.
The contractor must immediately reject orders that are not accurate.

3. Service and Delivery after Contract Expiration

Purchase orders must be issued before the SLP contract end term expires.

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Also, purchase order amendments cannot be issued to add product and software maintenance if the SLP contract end term has expired.

CONTRACT PRICES

Contract prices for products and/or services are maximums. The ordering department is encouraged to negotiate lower prices.

PRODUCT AND PRICING CHANGES AND/OR UPDATES ARE NOT AUTHORIZED UNTIL REVIEWED AND APPROVED BY DGS PROCUREMENT DIVISION MASTER AGREEMENTS UNIT.

Said documents are to be sent to the Department of General Services (DGS) Procurement Division, Master Agreements Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention Steve Lower.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the SLP, state departments shall, whenever practicable, first consider offers from small businesses that have established SLP contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when department files are reviewed.

SMALL BUSINESS/DVBE - TRACKING

State departments are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering department with the name of the small business or DVBE used and the dollar amount the ordering department can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering department can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering department with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 - b. The Contractor will indicate to the ordering department how the order meets the small business or DVBE goal, as follows:

- List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering department towards the small business or DVBE goal; and
- Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.
3. The ordering department's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

PRODUCTIVE USE REQUIREMENTS

Each software component must be in current operation for a paying customer and the paying customer must be external to the contractor's organization (not owned by the contractor and not owning the contractor).

To substantiate compliance with the Productive Use Requirements, the Contractor must provide upon request the name and address of a customer installation and the name and telephone number of a contact person.

The elapsed time such software must have been in operation is based upon the importance of the equipment or software for system operation and its cost. The following designates product categories and the required period of time for software operation prior to approval of the replacement item on the SLP.

Category 1 - Critical Software: Critical software is software that is required to control the overall operation of a computer system or peripheral equipment. Included in this category are operating systems, data base management systems, language interpreters, assemblers and compilers, communications software, and other essential system software.

| <u>Cost</u> | <u>Prior Operation</u> |
|--------------------------|------------------------|
| More than \$100,000 | 8 months |
| \$10,000 up to \$100,000 | 4 months |
| Less than \$10,000 | 1 month |

Category 2 - Non-Critical Software: Information technology equipment is defined in SAM Section 4819.2.

| <u>Cost</u> | <u>Prior Operation</u> |
|-------------|------------------------|
|-------------|------------------------|

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| | |
|--------------------------|----------|
| More than \$100,000 | 6 months |
| \$10,000 up to \$100,000 | 4 months |
| Less than \$10,000 | 1 month |

STATE AND LOCAL GOVERNMENTS CAN USE THE SLP

State and local government use of the SLP contracts is optional. A local government is any city, county, special district or other local governmental body or corporation, including UC, K-12 schools and community colleges,

that is empowered to expend public funds. While the state makes this contract available, each local government agency should make its own

determination whether the SLP is consistent with their procurement policies and regulations.

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies and guidelines are applicable. THE USE OF THE SLP DOES NOT REDUCE OR RELIEVE STATE DEPARTMENTS OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into The SLP contracts. Notwithstanding this, there is no guarantee that "every" possible requirement that pertains to all the different and unique state processes has been included.

TERMINATION OF SLP CONTRACT

1. The State or Contractor may terminate this SLP Contract at any time upon 30 days prior notice.
2. Upon termination or other expiration of this Contract, each party will assist the other party in orderly termination of the Contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
3. Prior to the expiration of this Contract, this Contract may be terminated for the convenience of both parties by mutual consent
4. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

STATEWIDE PROCUREMENT REQUIREMENTS

Departments must carefully review and adhere to the following Procurement Requirements, such as:

- SAM Section 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Departments are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each
- order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the SLP contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD: Technical questions: 916/651-6945 or Information and forms: 916/657-0529.
- Annual small business and disabled veteran reports.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective July 1, 2002, in accordance with Public Contract Code 10116, state departments are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-

Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Departments are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. DGS Administrative Fee

The Department of General Services (DGS) will bill each state and local agency directly an administrative fee for use of SLP contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS.

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

2. Advance Payments

Software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

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3. Credit Card

(See attachment B)

Eskel-Porter, Inc. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all SLP orders.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

Phone # 916/375-4390 or 916/375-4539

Fax # 916/375-4490

FEDERAL DEBARMENT

When federal funds are being expended, the department is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

AMERICANS WITH DISABILITY ACT (ADA)

ATTACHMENT A

SLP QUARTERLY BUSINESS ACTIVITY REPORT (A REPORT IS REQUIRED EVEN WHEN THERE IS NO ACTIVITY)

1. Calendar Quarter Number: (Quarter # and Year)
2. SLP Contract Number: XX-XX-XXXXX (including alpha suffix if applicable)
3. Contractor: Company Name and Address
4. Contractor Contact: Name and Phone Number

| 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. |
|-------------|-----------------------|---------------------|---------------------|----------------------------------|----------------|----------------|--------------|
| Agency Name | Purchase Order Number | Purchase Order Date | Agency Billing Code | Total Dollars per Purchase Order | Agency Contact | Agency Address | Phone Number |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

13. Total dollars for quarter: \$ _____

The Quarterly Report must contain all of the above data elements, but may be in a landscape report format.

1. Identify the calendar quarter number and year for the report you are submitting.
2. Identify your company's SLP contract number. A separate report is required and each contract should be differentiated by alpha suffix. Multiple contracts on Std. 65 State Purchase Order form should be itemized by contract number. For each individual contract (as differentiated by alpha suffix), identify and group together the contract number with line items and subtotal per contract number (do not include tax in the subtotal).
3. Identify your company name and mailing address.
4. Identify the company contact and phone number for the SLP contract or the person preparing and submitting the report.
5. Identify the State Agency or local government that issued the SLP order.
6. Identify the purchase order number (and supplement number if applicable) on the order form. This is not your invoice number. This is the number the agency or local government assigns to the order.
7. Identify the date the purchase order was issued. This is not the date you received, accepted, or invoiced the order.
8. Identify the State Agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Local governments will not reference a billing code. You may leave this blank for local government orders.
9. Identify the total dollars of each purchase order before tax. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount regardless of when you invoice order, perform services, deliver product, or receive payment. For amended orders, enter the incremental increase/decrease only.
10. Identify the "Bill To" agency or local government CONTACT on the purchase order.
11. Identify the "Bill To" agency or local government ADDRESS on the purchase order.
12. Identify the agency or local government phone number on the purchase order.
13. Identify the total dollars pre-tax for all orders placed in that calendar quarter.

ATTACHMENT B

ADA NOTICE

**Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY**

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable modification to participate in the Procurement process, or for persons having questions regarding reasonable modifications for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person that is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784